

**Deposition Designations for:  
EDWIN ORDWAY  
August 29, 2008**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co.  
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance  
Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz  
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich  
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and  
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal  
Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)  
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in Evidence  
AO = Attorney Objection  
BE = Best Evidence  
Cum. = Cumulative  
Ctr = Counter Designation  
Ctr-Ctr = Counter-Counter  
ET = Expert Testimony  
F = Foundation  
408 = Violation of FRE 408  
H = Hearsay  
IH - Incomplete Hypothetical**

**L = Leading  
LA = Legal Argument  
LC = Legal Conclusion  
LPK - Lacks Personal Knowledge  
LO = Seeking Legal Opinion  
NT = Not Testimony  
Obj: = Objection  
R = Relevance  
S = Speculative  
UP = Unfairly Prejudicial under Rule 403  
V = Vague**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF DELAWARE  
3  
4

In re: ) Chapter 11  
5 ) Case No.  
W.R. GRACE & CO., et al, ) 01-1139 (JFK)  
6 )  
Debtors. ) Jointly  
7 -----) Administered  
8  
9  
10

11 DEPOSITION OF EDWIN N. ORDWAY, JR.

12 New York, New York

13 Friday, August 29, 2008  
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20  
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22

23 Reported by:

24 MAYLEEN CINTRON, RMR, CRR

25 JOB NO. 18494

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<p>1 EDWIN N. ORDDWAY, JR., 2 called as a witness, having been duly 3 sworn by a Notary Public, was examined 4 and testified as follows: 5 THE REPORTER: Please state your 6 full name for the record. 7 THE WITNESS: Edwin N. Ordway, Jr. 8 EXAMINATION BY 9 MR. BERNICK: 10 Q. Good afternoon, Mr. Ordway. My 11 name is David Bernick. I think we met briefly 12 before. I'm here representing Grace and I'm 13 here to ask you some questions this afternoon. 14 I hope efficiently, so we can all get on to 15 more important matters on this Friday 16 afternoon. 17 Let me just ask you first: Have you 18 ever given a deposition before? 19 A. Yes. 20 Q. On how many occasions? 21 A. Six or seven. 22 Q. So, you know the basic rules. One 23 of the rules, very important rule, you're 24 under oath and you have an obligation to tell 25 the truth. Do you understand that?</p>	<p>1 E. Ordway 2 A. Yes. 3 Q. Another rule, equally important, is 4 that we want to be able to count on this 5 transcript as containing answers that you're 6 giving in response to my questions. 7 From that point of view, if at any 8 time you don't understand something that I'm 9 asking you, be sure to let me know and I'll do 10 my best to clarify it. 11 If you don't raise a question about 12 understanding, we'll assume that you 13 understand the questions and that you're 14 giving the answers that you believe are 15 appropriate. Can we proceed on that basis? 16 A. Yes. 17 Q. What's your area of expertise? 18 A. Restructuring, financial 19 restructuring. 20 Q. For how long have you been in that 21 area? 22 A. 18 years. 23 Q. I see from your CV that you have a 24 background in accounting. 25 A. That's correct.</p>
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<p>1 E. Ordway 2 Q. I take it, then, that you are 3 familiar with and are expert in the accounting 4 standards that are relevant to your work in 5 this case; is that correct? 6 A. Yes. 7 Q. Same thing with respect to a 8 financial analysis; are you familiar with the 9 standards and methodologies that are employed 10 by financial analysts insofar as they relate 11 to your work in this case? 12 A. Yes, I do. 13 Q. I got a copy of what I understand 14 to be your declaration in this matter. 15 (Grace Exhibit 1, Declaration, 16 marked for identification, as of this 17 date.) 18 Q. I'm going to show you Exhibit 1 and 19 ask you whether this is a copy of the 20 declaration that you have submitted in 21 connection with this matter? 22 MR. BERNICK: I'll give my esteemed 23 colleagues over here a copy. If you 24 want two, you can have two. 25 A. Yes, it is.</p>	<p>1 E. Ordway 2 Q. Is Exhibit 1, your declaration, 3 complete and accurate? 4 (Witness reviewing document.) 5 A. Yes, it is. 6 Q. And by "complete and accurate," is 7 your work in this case complete insofar as you 8 have been asked to do work in this case? 9 MR. PASQUALE: Well, object to 10 form. By "this case," do you mean the 11 contested matter? 12 MR. BERNICK: The contested matter. 13 MR. PASQUALE: Okay. 14 A. Yes. 15 Q. And is Exhibit 1, the declaration, 16 a complete and accurate reflection of the work 17 that you have done -- 18 A. Yes. 19 Q. -- on this contested matter? 20 A. Yes. 21 Q. I want to turn to the interest 22 calculation that appears on page 4, 23 Paragraph 8, of your declaration. 24 Does that paragraph set forth the 25 results of some interest calculations?</p>

<p style="text-align: right;">Page 26</p> <p>1 E. Ordway</p> <p>2 Q. Okay. So to be fair, then, it was</p> <p>3 counsel who came up with the idea of looking</p> <p>4 at the amount of interest at issue, correct?</p> <p>5 A. Yes.</p> <p>6 Q. It was counsel that came up with</p> <p>7 the idea of making that determination using</p> <p>8 the comparison between the default rate and</p> <p>9 the proposed plan rate, correct?</p> <p>10 MR. PASQUALE: Objection to form.</p> <p>11 Misstates prior testimony.</p> <p>12 MR. BERNICK: I think it is exactly</p> <p>13 what he said.</p> <p>14 MR. PASQUALE: I don't think it is.</p> <p>15 Q. It was counsel who decided, came up</p> <p>16 with the idea of using those particular</p> <p>17 elements -- that is, proposed plan versus</p> <p>18 default rate -- to define the interest at</p> <p>19 issue, correct?</p> <p>20 A. I'm not sure if it was our idea or</p> <p>21 their idea--</p> <p>22 Q. And it is certainly --</p> <p>23 A. -- to frame it in any manner.</p> <p>24 Q. And it was certainly, Counsel, then</p> <p>25 who asked you to determine whether that was</p>	<p style="text-align: right;">Page 27</p> <p>1 E. Ordway</p> <p>2 'di minimus', correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, because there is no standard</p> <p>5 for what's 'di minimus', did counsel give you</p> <p>6 any suggestions about what would be</p> <p>7 'di minimus'?</p> <p>8 A. No.</p> <p>9 Q. Now, you ultimately end up saying</p> <p>10 it's 'di minimus' by making a comparison to, I</p> <p>11 think as you put it, "the benefit now</p> <p>12 available to all stakeholders," right?</p> <p>13 A. Yes.</p> <p>14 Q. Whose idea was it to talk about</p> <p>15 what was available to all stakeholders? What</p> <p>16 does stakeholders even mean?</p> <p>17 A. Stakeholders are all the -- in our</p> <p>18 context, the way we wrote this, were all the</p> <p>19 parties in interest associated with the</p> <p>20 Debtor's cases.</p> <p>21 Q. Whose idea was it to determine</p> <p>22 whether the amount at issue was 'di minimus'</p> <p>23 by reference to the benefit available to all</p> <p>24 stakeholders?</p> <p>25 MR. PASQUALE: Objection to form.</p>
<p style="text-align: right;">Page 28</p> <p>1 E. Ordway</p> <p>2 Q. Whose idea was that?</p> <p>3 A. I believe that was our thought to</p> <p>4 include that in the affidavit.</p> <p>5 Q. So, your point of reference, it was</p> <p>6 you who decided that the point of reference</p> <p>7 for making a comparison and determining</p> <p>8 'di minimus', that the right point of</p> <p>9 reference would be "benefit available to</p> <p>10 stakeholders"?</p> <p>11 A. As well -- yes.</p> <p>12 Q. And it's true, is it not, that</p> <p>13 there is no accounting standard, convention,</p> <p>14 or methodology that tells you to make that</p> <p>15 comparison?</p> <p>16 A. That's correct.</p> <p>17 Q. It's true that there is no</p> <p>18 financial analysis, standard or methodology or</p> <p>19 convention that tells you to make that</p> <p>20 comparison, correct?</p> <p>21 A. Correct.</p> <p>22 Q. If somebody else were to make a</p> <p>23 different comparison or to determine what was</p> <p>24 'di minimus', you would have no basis using a</p> <p>25 standard, or method or convention to say what</p>	<p style="text-align: right;">Page 29</p> <p>1 E. Ordway</p> <p>2 they are, correct?</p> <p>3 A. It would be their judgment versus</p> <p>4 my judgment.</p> <p>5 Q. And to decide between your judgment</p> <p>6 versus their judgment, there is no objective</p> <p>7 standard or reliable method that you could</p> <p>8 point to right now that would enable you to</p> <p>9 make the decision, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, it's true, is it not, that</p> <p>12 when you make the comparison between the</p> <p>13 interest at issue and the benefit available to</p> <p>14 the stakeholders, you're really talking about</p> <p>15 a comparison of the interest at issue and the</p> <p>16 value that's been generated at Grace, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it is true, is it not, that the</p> <p>19 value that has been generated in Grace is</p> <p>20 reflected, according to your work, in the</p> <p>21 stock price, right?</p> <p>22 MR. PASQUALE: Objection to form.</p> <p>23 A. Yes.</p> <p>24 Q. And basically, the comparison that</p> <p>25 you draw in determining the significance of</p>

UCC  
BLG  
Chr



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<p>1 E. Ordway</p> <p>2 the interest at issue, are comparisons between</p> <p>3 the interest that has accrued to the debt on</p> <p>4 which you're opining by comparison to the</p> <p>5 value that's accreted to equity, correct?</p> <p>6 MR. PASQUALE: I'm going to object</p> <p>7 to form. The affidavit goes into more</p> <p>8 than just that, David, as you well <i>VCC &amp; BLG</i></p> <p>9 know. <i>Ctr</i></p> <p>10 A. It's one of the examples that we</p> <p>11 use.</p> <p>12 Q. Right, you got comparisons to</p> <p>13 EBITDA, you got comparisons to revenues. At</p> <p>14 the end of the day, EBITDA and revenue are</p> <p>15 also reflected in equity value, correct, or</p> <p>16 not?</p> <p>17 A. One would assume that the market</p> <p>18 value contemplates operating performance, so</p> <p>19 the answer would be yes.</p> <p>20 Q. So fundamentally, at the heart of</p> <p>21 your determination that the interest at issue</p> <p>22 is 'di minimus', is a comparison between the</p> <p>23 interest at issue on the one hand and the</p> <p>24 value of Grace equity on the other, correct?</p> <p>25 A. Not only the value of Grace, but</p>	<p>1 E. Ordway</p> <p>2 also the total value of the Company and the</p> <p>3 operating performance of the Company.</p> <p>4 Q. Operating performance, generally</p> <p>5 speaking, is reflected in equity; or not?</p> <p>6 A. Generally speaking.</p> <p>7 Q. But, is it true that equity value,</p> <p>8 that is stock price, can reflect many, many</p> <p>9 things other than company performance; true?</p> <p>10 A. Correct.</p> <p>11 Q. And in fact you provide no</p> <p>12 methodology in your declaration here that</p> <p>13 enables us to relate stock price to actual</p> <p>14 company performance, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, it's true, is it not, that the</p> <p>17 debt that you're talking about here and the</p> <p>18 equity securities that you're talking about</p> <p>19 here, are two totally different kinds of</p> <p>20 securities?</p> <p>21 A. Correct.</p> <p>22 Q. Debt accretes value based upon</p> <p>23 interest, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Equity accretes value based upon</p>
Page 32	Page 33
<p>1 E. Ordway</p> <p>2 performance, not interest, correct?</p> <p>3 A. Can I change an answer?</p> <p>4 Q. Depends on which one you want to</p> <p>5 change.</p> <p>6 MR. PASQUALE: Yes, you could --</p> <p>7 Q. I tell you what, if you want to ask</p> <p>8 me whether you could change an answer, I</p> <p>9 appreciate that. But you probably have the</p> <p>10 prerogative at some point in this process to</p> <p>11 change it on your own.</p> <p>12 So what answer do you want to</p> <p>13 change?</p> <p>14 A. The one from -- the prior question</p> <p>15 you asked me about the debt instrument, that</p> <p>16 it accretes value according to its contract</p> <p>17 rate of interest.</p> <p>18 In this instance, too, the debt is</p> <p>19 traded, there's a market for trading the debt,</p> <p>20 and the debt improved in value since the</p> <p>21 filing of the bankruptcy, albeit there were</p> <p>22 some ups and down, based on the performance of</p> <p>23 the Company as well.</p> <p>24 Q. Sure. As a matter of the debt</p> <p>25 contract, the security agreement or the</p>	<p>1 E. Ordway</p> <p>2 agreement that underpins the debt security,</p> <p>3 the value of that debt security, in the sense</p> <p>4 of the obligation to repay that security, is</p> <p>5 driven solely by the interest rate and</p> <p>6 principal amount, correct?</p> <p>7 A. And other fees that are contained</p> <p>8 in the terms of the agreement.</p> <p>9 Q. The value of the debt security, in</p> <p>10 the sense of what is owed to the creditor is</p> <p>11 not contingent upon how the Company performs</p> <p>12 correct?</p> <p>13 A. The obligation is not contingent</p> <p>14 upon the Company's performance, that's</p> <p>15 correct.</p> <p>16 Q. Where in the case of equity, equity</p> <p>17 does not accrete interest under contract,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Or under law, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And equity, by contrast to debt,</p> <p>23 accretes value based upon the performance of</p> <p>24 the Company and how that performance then is</p> <p>25 reflected in the stock price, correct?</p>

VCC &  
BLG  
CtrPP  
Ctr Ctr

Page 34 PP

Page 35

1 E. Ordway

2 A. Among other factors, yes.

3 Q. In fact, independently of market  
4 price, you could add private equity that  
5 accretes value simply based upon the  
6 performance of the Company, correct? PP

7 A. Correct.

8 Q. If you wanted to make a different  
9 comparison using your own work here -- put it  
10 differently.11 If we look at the work that you've  
12 done here, you choose to determine whether the  
13 interest at issue is 'di minimus' by comparing  
14 it to the value that has accreted to Grace's  
15 operations, among other things, correct?

16 MR. PASQUALE: Thank you, David.

17 A. Yes, among other things. PP

18 Q. But if we just wanted to talk about  
19 what was owed under the debt instruments,  
20 would you say that the amount at issue here is  
21 'di minimus' in relationship to the amounts  
22 that may or may not be owed under the debt  
23 agreements themselves? PP24 In other words, you compare the  
25 debt to the equity. I'm asking you: If you

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1 E. Ordway  
2 making.3 Q. Have you ever done an opinion on  
4 solvency? PP

5 A. Yes.

6 Q. Is that something that's ordinarily  
7 done by people within your field of expertise?8 MR. PASQUALE: David, I'm going to  
9 raise an objection. We had an  
10 agreement that questioning would be  
11 limited to the declaration.12 MR. BERNICK: I'm not going to  
13 stray from that agreement. You'll see.14 MR. PASQUALE: But solvency is not  
15 in here.16 MR. BERNICK: That's what I wanted  
17 to get you to say, really. PP18 Q. You know about solvency opinions,  
19 correct?

20 A. Yes, I do.

21 Q. You do not express here an opinion  
22 -- in your declaration, you do not express an  
23 opinion about solvency, nor do you do a  
24 solvency calculation, correct?

25 A. Correct.

1 E. Ordway

2 just focused on the debt, the amount of  
3 interest at issue here is not 'di minimus'  
4 compared to what is owed on the debt, correct?

5 A. Correct.

6 Q. In fact, is it true that if we  
7 compare the highest number, which is the  
8 default interest calculation that you've done,  
9 to the base interest rate, even assuming that  
10 that base interest rate extends beyond the  
11 event of Grace filing for bankruptcy, you're  
12 talking about as much as a 40 percent  
13 difference in the amount of interest it's  
14 owing, correct?

15 A. I think that calculation is right.

16 Q. And that certainly would not be  
17 'di minimus', correct?18 A. The statement of being 'di minimus'  
19 was in the context of other financial  
20 information. But in the context of the debt  
21 itself and the interest itself, I would not  
22 call that 'di minimus', if that were the  
23 comparison.

24 Q. Excuse me, what?

25 A. If that were the comparison we were

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1 E. Ordway

2 MR. BERNICK: Did I abide by my  
3 agreement?4 MR. PASQUALE: Well, you did. But  
5 you asked about solvency questions, and  
6 now I feel compelled to say for the  
7 record that the judge has deferred any  
8 issues of solvency until after the  
9 hearing. So we will reserve the right  
10 to deal with that issue later if we  
11 need to.12 MR. BERNICK: I don't want to argue  
13 about it. I'm making such progress  
14 here.15 MR. COBB: On the record for bank  
16 lenders, the judge has deferred certain  
17 questions with regard to solvency,  
18 calculations thereof, until a later  
19 date.20 MR. PASQUALE: That's more  
21 accurate.22 MR. BERNICK: I'm glad we are in  
23 agreement with respect to that.

24 BY MR. BERNICK:

25 Q. Now, you have looked also in your



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<p>1 E. Ordway</p> <p>2 declaration at certain factors that you</p> <p>3 believe have been responsible, at least in</p> <p>4 part, for the performance of Grace's stock,</p> <p>5 correct? <i>UCC + BLG</i></p> <p>6 A. Correct. <i>ctr</i></p> <p>7 Q. You made some observations of</p> <p>8 what's contributed to what you believe to be</p> <p>9 the dramatic increase in Grace's stock</p> <p>10 performance, correct?</p> <p>11 A. Correct.</p> <p>12 Q. I found a total of three things</p> <p>13 that you identify as being contributors to</p> <p>14 Grace's stock performance. One, which appears</p> <p>15 at Paragraph 5 of your declaration, is</p> <p>16 earnings generation, correct?</p> <p>17 A. Paragraph 6.</p> <p>18 MR. PASQUALE: Paragraph 6, right?</p> <p>19 MR. BERNICK: No, it's before that.</p> <p>20 Q. "Debtors' strong ongoing earnings</p> <p>21 generation." Tail-end of 5.</p> <p>22 A. Yes.</p> <p>23 Q. Another factor that you identify as</p> <p>24 being a contributor to Grace's stock</p> <p>25 performance, you have a Paragraph 6 in which</p>	<p>1 E. Ordway</p> <p>2 you refer to the "creditor's support of the</p> <p>3 Debtors' use of such cash to fund numerous</p> <p>4 strategic acquisitions and otherwise reinvest</p> <p>5 in their businesses"; do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. That's another factor that you say</p> <p>8 contributed to Grace's stock performance,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then in Paragraph 7 you</p> <p>12 identify a third contributor, where you say</p> <p>13 that the equity holders of the Debtors had</p> <p>14 benefited substantially as compared to the</p> <p>15 lenders in part from the use of the lender's</p> <p>16 cash, right?</p> <p>17 A. Correct.</p> <p>18 Q. So in taking a look at Grace's</p> <p>19 stock performance, we have you identifying</p> <p>20 three factors: I don't see any others here,</p> <p>21 but you can tell me if they are. But three</p> <p>22 factors which you say contributed to that</p> <p>23 performance; one is earnings generation, the</p> <p>24 other is creditors' support for Grace's</p> <p>25 strategic acquisition and reinvestment, and</p>
Page 40	Page 41
<p>1 E. Ordway</p> <p>2 the third is use of the lender's cash,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. It's true, is it not, that in</p> <p>6 expressing those opinions, you relied upon no</p> <p>7 documents, correct?</p> <p>8 A. Well, I relied on historical</p> <p>9 financial information to draw that conclusion.</p> <p>10 Q. Did you or did you not rely upon</p> <p>11 documents?</p> <p>12 A. I relied upon documents.</p> <p>13 Q. Well, I've got a statement from</p> <p>14 Mr. Pasquale. I asked to be furnished "by the</p> <p>15 close of business tomorrow any documents</p> <p>16 Ordway has relating to the reasons for Grace's</p> <p>17 stock performance." And the answer that I got</p> <p>18 back was that Mr. Pasquale checked with you</p> <p>19 and Capstone and there are no documents of the</p> <p>20 type and subject requested that were relied</p> <p>21 upon in preparing the declaration.</p> <p>22 That's why I simply ask you: When</p> <p>23 it came to the analysis that you performed and</p> <p>24 the factors that contributed to Grace's stock</p> <p>25 performance, isn't it a fact that you relied</p>	<p>1 E. Ordway</p> <p>2 upon no documents in preparing your</p> <p>3 declaration?</p> <p>4 MR. PASQUALE: Well, let me jump in</p> <p>5 here. I understood from your one-line</p> <p>6 e-mail, because we did not have a</p> <p>7 discussion about it, that you were</p> <p>8 asking for any documents that they</p> <p>9 relied upon in preparing the</p> <p>10 declaration, that's how I answered you,</p> <p>11 that bear upon the reason for the</p> <p>12 market price.</p> <p>13 MR. BERNICK: Yes.</p> <p>14 MR. PASQUALE: Okay.</p> <p>15 MR. BERNICK: And I'm just asking</p> <p>16 the witness.</p> <p>17 Q. In preparing this declaration,</p> <p>18 isn't it a fact that the declaration offers</p> <p>19 the view that these factors contributed to</p> <p>20 stock performance? And I'm saying: Isn't it</p> <p>21 true that in preparing this declaration, you</p> <p>22 relied upon no documents relating to the facts</p> <p>23 or reasons for Grace's stock performance?</p> <p>24 A. I relied upon historical financial</p> <p>25 statements and 10-Qs, 10-Ks and monthly</p>

*UCC +*  
*BLG*  
*ctr*

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1 E. Ordway  
 2 operating reports to do the analysis that led  
 3 me to conclude the three points that you  
 4 raised.  
 5 **Q. But you didn't rely upon those**  
 6 **documents in preparing your declaration which**  
 7 **you said was complete and accurate?**  
 8 MR. BERNICK: I don't understand  
 9 the difference. How can he rely upon  
 10 the documents in doing the analysis  
 11 that's in the declaration, but not rely  
 12 upon those documents in doing the  
 13 declaration.  
 14 MR. PASQUALE: Because you're  
 15 trying to get the witness to say what  
 16 you want him to say, and you're not  
 17 listening to the answer.  
 18 There is a difference between  
 19 reasons for the market price moving and  
 20 the fact of the market price. What the  
 21 witness is telling you is that he  
 22 looked at those documents to draw the  
 23 conclusions he did, based on fact.  
 24 **Q. I'll just read it to you.**  
 25 **"Please furnish by close of**

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1 E. Ordway  
 2 **did, in fact, contribute to Grace's stock**  
 3 **performance?**  
 4 A. Could you repeat the question? Or  
 5 clarify it for me?  
 6 **Q. I guess it's a little more**  
 7 **cumbersome than it really has to be. Let me**  
 8 **get at it this way:**  
 9 **Is it true that you nowhere**  
 10 **quantify the contribution of these three**  
 11 **factors -- that is, earnings generation,**  
 12 **creditors' support and lender's money -- you**  
 13 **nowhere quantify the contribution that any one**  
 14 **of those factors made to Grace's stock price,**  
 15 **correct?**  
 16 A. That's correct.  
 17 **Q. Is it also true that nowhere do you**  
 18 **say that the general Unsecured Creditors at**  
 19 **issue here, the bank creditors, nowhere do you**  
 20 **say that those creditors made any other**  
 21 **contribution to Grace stock performance, that**  
 22 **is contribution beyond creditors' support for**  
 23 **acquisitions and reinvestments and their cash?**  
 24 A. I don't say anything else other  
 25 than those two in this affidavit.

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1 E. Ordway  
 2 **business tomorrow any documents Ordway has**  
 3 **relating to the reasons for Grace's stock**  
 4 **performance."**  
 5 **I'm just asking you: Were there**  
 6 **any documents that you had relating to the**  
 7 **reasons for Grace's stock performance which**  
 8 **you relied upon in preparing the declaration?**  
 9 A. Well, I guess the answer would have  
 10 to be yes, simply because I inferred that the  
 11 stock performance was related to the operating  
 12 performance of the Company. And I learned  
 13 what the operating performance of the Company  
 14 was based on reviewing historical financial  
 15 information.  
 16 **Q. What about, let's take this second**  
 17 **factor that you identified. Help me go**  
 18 **through it.**  
 19 **The observations that you made in**  
 20 **your declaration as to the contribution that**  
 21 **these three factors made -- that is, earnings**  
 22 **generation, creditors' support and lender's**  
 23 **money -- can you point to any standard, test,**  
 24 **or stated methodology that you used in**  
 25 **determining that each one of these factors**

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1 E. Ordway  
 2 **Q. Were you aware, when you put**  
 3 **together this declaration, that there was a**  
 4 **Plan of Reorganization that was originally**  
 5 **proposed by Grace in the fall of 2004?**  
 6 A. Yes.  
 7 **Q. Do you know who the proponents were**  
 8 **of that plan?**  
 9 MR. PASQUALE: I think you need to  
 10 put a more precise date on it. You're  
 11 talking about the first plan, the very  
 12 first?  
 13 MR. BERNICK: The second one. The  
 14 second one.  
 15 A. The Creditors Committee and the  
 16 Debtor.  
 17 **Q. Is it true that you nowhere**  
 18 **identify in this declaration the creditors'**  
 19 **support for Grace's second Plan of**  
 20 **Reorganization as being a factor that**  
 21 **contributed to the performance of its stock?**  
 22 MR. COBB: Object to form, the word  
 23 "creditors."  
 24 **Q. Go ahead.**  
 25 A. I have no mention in here.



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1 E. Ordway  
 2 **Q. Have you determined what other, if**  
 3 **any, contribution the general Unsecured**  
 4 **Creditors at issue here, what other**  
 5 **contribution, if any, those creditors made to**  
 6 **the bankruptcy case?**  
 7 MR. COBB: Objection to form again.  
 8 A. Am I aware of other ones?  
 9 **Q. Yes.**  
 10 A. Yes.  
 11 MR. PASQUALE: Let's be clear.  
 12 Your objection is well taken.  
 13 MR. COBB: Objection as to form.  
 14 I'll be precise. The "general  
 15 Unsecured Creditors at issue here."  
 16 You can answer if you can.  
 17 MR. PASQUALE: Do you mean the  
 18 Committee, David or do you mean the  
 19 creditor body? I think that's the  
 20 issue.  
 21 MR. BERNICK: I make no such  
 22 distinction. If you want to object to  
 23 form on the grounds that the Committee  
 24 is different from the lenders, feel  
 25 free.

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1 E. Ordway  
 2 **Unsecured Creditors made to Grace's stock**  
 3 **price, correct?**  
 4 A. Correct.  
 5 **Q. I don't see anywhere in your**  
 6 **declaration where you cite any evidence to**  
 7 **support the proposition that the creditors**  
 8 **support for acquisition and reinvestment had**  
 9 **any effect on stock price. Would you agree**  
 10 **with me that there is nothing in the**  
 11 **declaration that provides that evidence?**  
 12 A. I agree.  
 13 **Q. Isn't it true that Grace had to**  
 14 **bring proposed acquisitions before the**  
 15 **Bankruptcy Court for approval?**  
 16 A. Correct.  
 17 **Q. Isn't it true that none of those**  
 18 **acquisitions were contested by anybody?**  
 19 A. They weren't contested by us as a  
 20 result of our review and analysis, and belief  
 21 that it was the appropriate course of action.  
 22 **Q. But they weren't contested by any**  
 23 **of the other stakeholders in the case, were**  
 24 **they?**  
 25 A. Not that I recall.

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1 E. Ordway  
 2 **Q. My question is whether you have**  
 3 **looked to see whether the unsecured lenders in**  
 4 **this case made any other contribution to the**  
 5 **bankruptcy case itself other than being**  
 6 **co-proponents of Grace's Plan of**  
 7 **Reorganization?**  
 8 A. Is the question the unsecured  
 9 lenders or the Creditors Committee? I guess  
 10 you said --  
 11 **Q. Either or both.**  
 12 A. The Committee, I believe, has  
 13 provided substantial contribution to the case  
 14 in terms of, as the case has progressed, since  
 15 its onset with being cooperative with the  
 16 Debtor.  
 17 **Q. Is there anywhere in the**  
 18 **declaration where you state that those**  
 19 **activities in any way, shape, or form**  
 20 **contributed to Grace's stock price?**  
 21 A. No.  
 22 **Q. Let's talk a little bit about**  
 23 **creditors' support. Creditor's support for**  
 24 **Grace acquisitions and reinvestments is one of**  
 25 **the two contributions which you say that the**

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1 E. Ordway  
 2 **Q. In fact, all of Grace's**  
 3 **acquisitions, everybody agreed, were prudent**  
 4 **and appropriate acquisitions to make, correct?**  
 5 A. I'm not sure what the other party's  
 6 conclusions were, but they didn't object.  
 7 **Q. So, is what you're saying that the**  
 8 **contribution of general Unsecured Creditors**  
 9 **when it comes to creditors' support, is that**  
 10 **they decided not to object?**  
 11 A. They decided to not object.  
 12 **Q. What about reinvestment? Are you**  
 13 **aware of any reinvestment that Grace made?**  
 14 **All Grace's financial, including CapEx, were**  
 15 **made available to the Committee and different**  
 16 **stakeholders, correct?**  
 17 A. Correct.  
 18 **Q. Are you aware of any issue that was**  
 19 **ever raised with respect to the reinvestment**  
 20 **of Grace earnings into the Grace business?**  
 21 A. There were issues raised, but I  
 22 think concluded to our satisfaction over time.  
 23 **Q. But did anyone at any point in the**  
 24 **bankruptcy ever object to any of Grace's**  
 25 **reinvestments?**

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1 E. Ordway  
 2 A. Not that I recall.  
 3 Q. So they were essentially  
 4 noncontroversial, weren't they?  
 5 A. I think it was controversial in the  
 6 sense of the Company making acquisitions  
 7 during a bankruptcy, but we accepted that they  
 8 were appropriate in the circumstances.  
 9 Q. So again, the contributions that  
 10 the creditors made, insofar as reinvestment  
 11 was concerned, was simply a decision not to  
 12 object, correct?  
 13 A. Correct.  
 14 Q. So when we're sitting here today,  
 15 you say that the creditors' support with  
 16 respect to acquisitions and reinvestment  
 17 created a positive contribution to stock  
 18 value, all you're really referring to is that  
 19 you might have had an impact on Grace's stock  
 20 value if you had decided to object to the  
 21 acquisitions or the reinvestments, correct?  
 22 MR. PASQUALE: Objection to form.  
 23 A. It would have been detrimental to  
 24 the value of the Company, highly likely, if we  
 25 objected to some of these acquisitions.

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1 E. Ordway  
 2 idea.  
 3 Q. Who decided how that analysis  
 4 should be done; you or counsel?  
 5 A. I believe it was our idea as to how  
 6 this calculation and presentation should be --  
 7 should be made to illustrate that point.  
 8 Q. Well, but when it came to  
 9 creditors' support, what we just got done  
 10 talking about, was it your idea to identify  
 11 creditors support as a potential contributor  
 12 to stock price or counsel's idea?  
 13 A. The creditors' support as it  
 14 relates to the reinvestments and acquisitions?  
 15 Q. Yes.  
 16 A. That was my idea.  
 17 Q. And the use of lender's cash, was  
 18 that your idea or counsel's idea?  
 19 A. That may have been counsel's idea.  
 20 I don't recall.  
 21 Q. Now, in neither instance, that is  
 22 neither in respect to creditors' support nor  
 23 in respect to use of lender's cash, in neither  
 24 case do we see any quantification of the  
 25 contribution, correct?

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1 E. Ordway  
 2 Q. And you regard that as being a  
 3 favorable contribution to the case, that you  
 4 simply failed to get in the way?  
 5 MR. PASQUALE: Objection to form.  
 6 A. Yes, I do.  
 7 Q. Let's talk about money, the use of  
 8 cash, which appears on, I think, the next  
 9 page.  
 10 It says, "The equity holders of the  
 11 Debtors have benefited substantially as  
 12 compared to the lenders, in part from the use  
 13 of lender's cash." Do you see that?  
 14 A. Yes.  
 15 Q. Now, that has got two components,  
 16 one is that there was a benefit to the equity  
 17 holders, and the second, that the benefit was  
 18 substantial, right?  
 19 A. Yes.  
 20 Q. Incidentally, whose idea was it to  
 21 take a look at whether the general Unsecured  
 22 Creditors had created a positive contribution  
 23 to Grace's stock performance? Was that your  
 24 idea or counsel's idea?  
 25 A. I think it may have been counsel's

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1 E. Ordway  
 2 A. I don't have it calculated in here  
 3 in this paragraph, but it's a half a million  
 4 dollars worth of lending, plus 400 and change  
 5 of interest that hasn't been paid.  
 6 Q. I just asked you whether we see  
 7 anywhere in here a methodology that you used  
 8 in determining what contribution, if any, that  
 9 cash had?  
 10 A. No.  
 11 Q. Now, if we wanted to determine --  
 12 with respect to creditors' support, if we  
 13 wanted to determine the impact that that had  
 14 on stock price, can you point to any  
 15 accounting or financial analysis, methodology  
 16 or standard that you used in determining the  
 17 creditors' support did have a positive impact  
 18 on stock price?  
 19 A. I don't have a calculation to  
 20 demonstrate that.  
 21 Q. Do you have any kind of standard,  
 22 methodology, or stated methodology to  
 23 demonstrate it, on creditors' support?  
 24 A. There isn't a standard methodology  
 25 for determining a precise quantification of

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1 E. Ordway  
 2 the benefit of the stock price from the  
 3 lender's cash.  
 4 Q. I'm talking about creditors'  
 5 support.  
 6 MR. PASQUALE: More generally.  
 7 Q. Creditors' support for acquisitions  
 8 and reinvestments.  
 9 A. There isn't a precise methodology  
 10 for determining that.  
 11 Q. There isn't any methodology for  
 12 determining that, correct, this is a question  
 13 of your judgment?  
 14 A. It would be a question of judgment.  
 15 Q. When it comes to lender's cash. I  
 16 want to go through lender cash a little bit.  
 17 First of all, we don't see here the  
 18 deployment of any standard, methodology or  
 19 objective test in saying the use of lender's  
 20 cash benefited the equity holders or the  
 21 Debtor, correct?  
 22 A. Correct.  
 23 Q. Same thing with regard to the word  
 24 "substantially," it says that the equity  
 25 holders benefited substantially. Was that

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1 E. Ordway  
 2 A. Correct.  
 3 Q. And we know that the compensation  
 4 for the use of that principal with simple  
 5 interest, would be about the \$287 million  
 6 number, right?  
 7 A. That sounds correct. That sounds  
 8 about right.  
 9 Q. Now, if we deal with default,  
 10 default has got two components to it, one is a  
 11 different rate, and the other is compounded,  
 12 correct?  
 13 A. Correct.  
 14 Q. If we just talk about the default  
 15 rate applying before we get to interest on  
 16 interest, just apply the higher default rate,  
 17 am I right that that would take the interest  
 18 up approximately \$15 to \$18 million to about  
 19 \$304 million?  
 20 A. I don't know that calculation, if  
 21 that's right or wrong.  
 22 Q. So, if we have principal of  
 23 \$500 million, and the unpaid interest on the  
 24 principal, not interest on interest, but  
 25 interest on the principal, that would be

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1 E. Ordway  
 2 your word or counsel's word?  
 3 A. My word.  
 4 Q. Is that a word that was derived  
 5 from the accounting literature or the  
 6 financial analysis literature, or that's just  
 7 a general word in your vocabulary?  
 8 A. It's a general word in my -- it is  
 9 my judgment to use that word.  
 10 Q. That there is no objective measure  
 11 or test that you used to determining  
 12 substantial or insubstantial, correct?  
 13 A. No.  
 14 Q. Is my statement correct, that there  
 15 was no objective test that you used?  
 16 A. Sorry. Yes.  
 17 Q. Now, when we talk about the money,  
 18 the cash that the lenders provided to Grace  
 19 that Grace used, we have the principal of \$503  
 20 million, principal plus accrued interest as of  
 21 the date of filing, correct?  
 22 A. Correct.  
 23 Q. Now, the loan documents call for  
 24 compensation for the use of that principal  
 25 with simple interest, correct?

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1 E. Ordway  
 2 something in the area of between \$280 and  
 3 \$300 million approximately?  
 4 MR. PASQUALE: Object to form.  
 5 A. I'm not sure of your calculation.  
 6 But it sounds order-of magnitude, like it  
 7 might be good for this discussion.  
 8 Q. What I'm getting at is: When we  
 9 talk about use of lender's cash, we have  
 10 principal, we have interest on the principal  
 11 and we have interest on interest. Those are  
 12 three different things, correct?  
 13 A. Correct.  
 14 Q. And all I'm trying to do is get a  
 15 rough idea of the three tranches: The  
 16 principal plus accrued interest as of the date  
 17 of the filing is roughly \$500 million, the  
 18 unpaid interest on principal -- simple  
 19 interest, not interest on interest, interest  
 20 on principal -- is another 300-odd-million  
 21 dollars, and then we have the interest on  
 22 interest component which takes you as high up  
 23 as the \$414 million, right?  
 24 MR. PASQUALE: Objection. Asked  
 25 and answered.



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1 E. Ordway

2 A. I can't confirm precisely your  
3 number other than the 414 and the  
4 500-and-three-and-a-half, which is the  
5 principal plus pre-petition interest.

6 Q. So when you say that really it is  
7 the equity holders and the Debtors used the  
8 lender's cash, how do you know that they used  
9 unpaid interest on principal?

10 A. I don't understand the question.

11 Q. Well, unpaid interest on principal,  
12 you have the principal of \$500 million, you  
13 then have monies above that all the way up to  
14 another \$400 million, what portion of that  
15 \$400 million that you say would be owing to  
16 the Unsecured Creditors as interest, either  
17 interest on principal or interest on interest,  
18 how much of that do you know that the Debtor  
19 actually used in its operations?

20 A. It would be -- I suppose we can  
21 calculate it by looking at change in cash  
22 balances from the beginning of the case --  
23 through now, for example. The difference --  
24 first of all, cash is fungible, but presumably  
25 the balance -- the difference between that

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1 E. Ordway

2 is a significant amount of money and that it  
3 exceeds the change in the cash on-hand from  
4 the beginning of the case till now. So it is  
5 implicit that that difference, a portion was  
6 used to fund operations. And certainly during  
7 the case it was used to fund operations.

8 Q. I'm not talking about just the  
9 interest on principal or interest on interest.  
10 Not the original \$500 million.

11 MR. PASQUALE: So he is going  
12 outside the declaration to ask you that  
13 question.

14 MR. BERNICK: To the contrary.

15 MR. PASQUALE: That's what he  
16 wrote.

17 MR. BERNICK: It is all embedded.

18 That's what I'm trying to find out.

19 Q. You said that the equity holders  
20 used the lender's cash. I'm construing  
21 lender's cash to be the broadest it could  
22 possibly be, which is principal, interest on  
23 principal and interest on interest.

24 I'm simply asking whether you know  
25 that statement to be true with respect to

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1 E. Ordway

2 would have been used in operations, to support  
3 operations.

4 Q. But that's what I'm asking: Do you  
5 know how much of the lender's interest, unpaid  
6 interest, actually got used in operations?  
7 Does that anywhere appear in the affidavit?

8 A. No.

9 Q. It's true, is it not, that Grace  
10 has had substantial cash balances, correct?

11 A. Yes.

12 Q. That cash balance as of the end of  
13 June of this year is about \$400 million and  
14 that's after some very substantial payments,  
15 correct?

16 A. Yes.

17 Q. Do you know that Grace's cash  
18 balance ever was lower than the unpaid  
19 interest on interest?

20 A. I don't know.

21 Q. Well, if you don't know, how do you  
22 know that Grace actually used the lender's --  
23 not the principal, but actually used unpaid  
24 interest in order to fund its growth?

25 A. I know that taken over time, this

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1 E. Ordway

2 interest on principal or interest on interest,  
3 based on what is in your declaration?

4 A. I don't have a calculation to  
5 precisely demonstrate how much of the unpaid  
6 interest, whether it's interest on interest,  
7 was, in effect, used for operations other than  
8 generally it had to have been.

9 Q. No quantification at all appears in  
10 the declaration, correct?

11 A. No.

12 Q. You can't tell whether it was  
13 substantial or "de minimus", correct, as an  
14 expert?

15 A. The reason that we're used the word  
16 "substantial" is because the sum is \$414  
17 million, that's a substantial number.

18 Q. Fair enough. But you cannot, as an  
19 expert, say "substantial" when it comes to the  
20 actual cash that was actually used in  
21 operations because you don't know how much  
22 that was, correct?

23 A. I don't know how much that was at  
24 this point in time, although that's  
25 determinable, certainly.

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1 E. Ordway  
2 **Q. But today you can't say**  
3 **"substantial" because you don't know as an**  
4 **expert, correct?**

5 MR. PASQUALE: Objection to form.

6 A. I believe that, again, cash is  
7 fungible and that it -- you know, the cash  
8 that otherwise would have been paid for  
9 interest over the course of almost seven years  
10 is \$414 million, and certainly a fair amount  
11 of that would have certainly -- certainly must  
12 have benefited the Company.

13 **Q. Fair amount, that's as much as you**  
14 **can say?**

15 A. I can't be precise, okay.

16 **Q. Okay. Let's talk about interest on**  
17 **interest. That would be the top \$100 million.**

18 Can you say, as you sit here today,  
19 that any of the interest on interest was  
20 actually used in operations?

21 A. I haven't done that determination.

22 **Q. In Paragraph 10, you use another**  
23 **word. You say, "The amount at issue, \$91**  
24 **million, represents a small percentage of all**  
25 **the above metrics."**

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1 E. Ordway  
2 securities law and to financial analysts, does  
3 it not?

4 A. Yes.

5 **Q. Now, when you say that a five**  
6 **percent change in stock price is immaterial,**  
7 **that's not true in an accounting sense, is it?**

8 A. No.

9 **Q. That's not true in the securities**  
10 **law sense, is it?**

11 A. No.

12 **Q. That's not true under any standard**  
13 **of financial analysis of equity value, that a**  
14 **five percent swing in equity value is**  
15 **"immaterial," correct?**

16 A. Could you ask the question again?

17 **Q. Yes. That's not true under any**  
18 **standard of financial analysis of equity**  
19 **value, that a five percent swing in equity**  
20 **value is "immaterial," correct?**

21 A. I think it could be considered  
22 immaterial in valuing equity securities.

23 **Q. Could be?**

24 A. Depending on the circumstances.

25 **Q. Well, if today we knew there was**

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1 E. Ordway  
2 Then you go on to say, "In  
3 particular, the value each shareholder would  
4 need to provide to the lenders to ensure  
5 payment of post-petition interest at ABR plus  
6 the two percent default rate, is an immaterial  
7 \$1.26 per share, i.e., approximately five  
8 percent of shareholder value." Do you see  
9 that?

10 A. Yes.

11 **Q. Now, that word "immaterial," was**  
12 **that your word or --**

13 A. It's my word.

14 **Q. Your word.**

15 And the comparison between the  
16 amount at issue to the stock price, was that  
17 your idea, that comparison, or counsel's idea?

18 A. I think that might have been our  
19 idea.

20 **Q. Do you know?**

21 A. I don't recall.

22 **Q. Now, materiality has meaning to**  
23 **accountants, does it not?**

24 A. Yes.

25 **Q. Materiality has meanings under the**

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1 E. Ordway  
2 going to be a permanent drop in the stock, a  
3 New York Stock Exchange company was going to  
4 go down five percent, once and for all, had to  
5 change because money was going to go out the  
6 door, you're saying from an equity valuation  
7 point of view, that doesn't make a difference,  
8 it is immaterial?

9 A. In your example, that would be  
10 material.

11 **Q. But what we're talking about here**  
12 **is a nonperformance driven, one time,**  
13 **non-recoverable hit to stock value, never**  
14 **comes back, correct?**

15 A. No, it never comes back.

16 **Q. And you're saying that is**  
17 **immaterial in terms of looking at the value of**  
18 **the equity itself?**

19 A. I would say it is not material in  
20 the context of the total case, and in  
21 particular the substantial increase in the  
22 value of the stock since the inception of the  
23 case.

24 **Q. Well, we'll talk about the case in**  
25 **a minute. I'm just talking about from the**



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1 E. Ordway  
2 point of view of valuing equity securities.

3 There is no way a change or a  
4 permanent decrement of five percent in the  
5 value of an equity security outside a  
6 bankruptcy case would be immaterial, correct?

7 MR. PASQUALE: Objection to form.

8 He already told you what he meant by  
9 "immaterial".

10 MR. BERNICK: We are going to get  
11 to that.

12 MR. PASQUALE: You just want to ask  
13 your questions your way.

14 A. Yes.

15 Q. Yes what?

16 A. Maybe not. Can you ask the  
17 question?

18 Q. It's no way it would be immaterial  
19 outside of a bankruptcy, correct?

20 A. Correct.

21 Q. Now, in the context of a  
22 bankruptcy, we can look at a bankruptcy as  
23 being a lot of different stakeholders worth  
24 lots of values and you can say, because I'm  
25 supposing that you are saying, that in the

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1 E. Ordway  
2 immaterial?

3 A. I don't think that would be  
4 immaterial.

5 Q. So, it matters for the debt guys  
6 but not the equity guys?

7 MR. PASQUALE: Objection to form.

8 Misstates the testimony.

9 Q. Let me just ask you: An equity  
10 player who comes in at 95 percent of current  
11 market price around a debt player who comes in  
12 at 95 percent of current debt price, for both  
13 of them, a five percent drop would be  
14 material; true or not?

15 A. It's true, but your context is a  
16 current transaction, not since the onset of  
17 the bankruptcy, which is my approach here.

18 Q. Oh, but since the onset of the  
19 bankruptcy, if you want to go back to the  
20 onset of the bankruptcy, the onset of the  
21 bankruptcy, these general Unsecured Creditors  
22 had securities that were trading at numbers  
23 that were way below par value, correct?

24 A. Nevertheless, the Company had an  
25 obligation to pay par, you know, pay that debt

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1 E. Ordway  
2 context of all the money that has accrued to  
3 equity during the course of this case, five  
4 percent is not a lot?

5 A. Correct.

6 Q. Is that what you meant here?

7 A. Correct.

8 Q. Every one of those equity people  
9 are going to say, what if it's a shareholder  
10 who bought in at 95 percent of the current  
11 stock price; five percent would mean a total  
12 loss of any profit on his investment, correct?

13 A. Sure. Yes.

14 Q. And that's not material to people  
15 like that?

16 A. My comment is in the context of the  
17 growth of the stock since the inception of the  
18 bankruptcy.

19 Q. What about the debt securities, the  
20 general unsecured lenders who are at issue  
21 here who bought in at five percent off the  
22 current market price of those debt securities  
23 today?

24 A five percent drop in the value of  
25 their debt securities, would that be

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1 E. Ordway  
2 back.

3 Q. So, it's really in light of the  
4 Company's obligation to pay the debt that you  
5 consider a change of five percent in the debt  
6 securities to be more material than it would  
7 be in the case of the equity securities,  
8 correct?

9 A. I thought you were asking me about  
10 a current transaction, if to from one week to  
11 another there is a five percent drop in the  
12 debt securities, and I said yes, that would be  
13 material.

14 Q. So five percent during the last  
15 week is more important than five percent  
16 during the last year or the last five years?

17 A. Yes.

18 Q. And that's true because the five  
19 percent is just the money is not worth as  
20 much, or it's a smaller amount? How do you  
21 justify to somebody taking away five percent  
22 just because they happened to be buyers  
23 earlier in the game rather than later in the  
24 game?

25 A. I justify it by the extraordinary



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1 E. Ordway  
 2 gains that they've incurred, and in that  
 3 context, from the beginning of the case.  
 4 **Q. So the essence you're saying that**  
 5 **it is immaterial to the shareholders is**  
 6 **because some of them who happened to be in**  
 7 **early have made so much money, five percent is**  
 8 **not material, whereas it might be very**  
 9 **material to debt or to equity holders who just**  
 10 **got into the game, correct?**  
 11 A. Correct.  
 12 **Q. And yet, under this analysis,**  
 13 **you're saying that it doesn't make any**  
 14 **difference, it's immaterial even to the person**  
 15 **who bought in the last week?**  
 16 MR. PASQUALE: Objection to form.  
 17 That is not what he has said  
 18 repeatedly. Go ahead.  
 19 A. Should I repeat it? I mean, it's  
 20 the \$1.26 and the five percent, my view that  
 21 that's immaterial, my judgment is in the  
 22 context of the change of the value of the  
 23 stock since the inception of the bankruptcy.  
 24 **Q. And there is no accounting or**  
 25 **financial analysis standard, methodology,**

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1 E. Ordway  
 2 paragraph -- you didn't ask me a question.  
 3 **Q. That's okay. I don't want to get**  
 4 **involved. Your lawyer was quibbling, I**  
 5 **wasn't. He's okay. He almost never quibbles.**  
 6 **Are you saying that the five**  
 7 **percent decrement in equity value is**  
 8 **immaterial to the progress of the case? Are**  
 9 **you expressing any opinion that says that this**  
 10 **five percent difference will not make a**  
 11 **difference to the ultimate outcome of the case?**  
 12  
 13  
 14 (Continued on next page to include jurat.)  
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1 E. Ordway  
 2 **convention on the basis of which you can say**  
 3 **that five percent is immaterial, correct?**  
 4 A. Just my judgment, yes.  
 5 **Q. Now, in this case, we have a case**  
 6 **here and one of the predicates for your**  
 7 **analysis, am I correct, is the proposed plan;**  
 8 **that is, when you talk about all these**  
 9 **different things happening and all the value**  
 10 **that's there, that's affected by developments**  
 11 **in the case, correct?**  
 12 A. To some extent, yes.  
 13 **Q. And today there is a proposed plan,**  
 14 **correct?**  
 15 A. Yes.  
 16 MR. PASQUALE: I don't know, is  
 17 there?  
 18 MR. BERNICK: Well, he said --  
 19 MR. PASQUALE: Talking about the  
 20 term sheet.  
 21 MR. BERNICK: Okay. It's actually  
 22 contract. But he says "proposed plan,"  
 23 so I wanted to use his terminology.  
 24 MR. PASQUALE: Okay. Fair enough.  
 25 A. Well, we defined Plan in

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1 E. Ordway  
 2 A. I'm not expressing that opinion in  
 3 this affidavit.  
 4 MR. BERNICK: I have no further  
 5 questions.  
 6 MR. O'NEIL: Nothing.  
 7 MR. COBB: Nothing.  
 8 MR. PASQUALE: We're done.  
 9 (Time noted: 3:18 p.m.)  
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EDWIN N. ORDWAY, JR.

Subscribed and sworn to before me,  
 this \_\_\_\_ day \_\_\_\_\_ of 2008.

Notary Public